82-5528

CASE NO. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1982

JANICE BUTTRUM,

Petitioner,

-vs-

STATE OF GEORGIA,

Respondent.

APPENDIX TO THE PETITION FOR
WRIT OF CERTIORARI

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In the Supreme Court of Georgia Decided: JUL 8 1982

38436. BUTTRUM v. THE STATE.

WELTNER, Justice.

The defendant was indicted for the murder of Demetra Faye Parker and the theft of her car. She was convicted on both counts and sentenced to death for the murder and ten years for motor vehicle theft. The jury in recommending the death penalty found the existence of four statutory aggravating circumstances. The victim was raped, sodomized and stabbed 97 times during the early morning hours of September 3, 1980, and her body was discovered by the manager that morning in her room at a motel where she was a guest. The defendant and her husband were also occupants of the same motel. The key to defendant's room was found on the counter in the motel office. Upon inspection of their room, a bloody wash cloth and bar of soap was found. The police were notified and warrants were issued for both defendant and her husband. They were arrested in Florida and returned to Georgia. The husband was tried first, convicted and sentenced to death. He committed suicide while his appeal was pending in this Court.

1. We will deal first with errors claimed during the guilt-innocence phase of the trial.

Enumerations of error 3 and 4 contend the trial court erred in denying defendant's motion for change of venue and failing to disqualify 2 jurors who had formed an opinion as to guilt. The defendant argues that by reason of extensive publicity from all the news media, a fair trial was impossible.

"'The test as to whether pretrial publicity has so prejudiced a case that an accused can not receive a fair trial is whether the jurors summoned to try the case have formed fixed opinions as to guilt or innocence of the accused from reading such publicity.' Dampier v. State, supra [245 Ga. 427, 431 (265 SE2d 565) (1980)]. 'To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.' Irvin v. Dowd, 366 U. S. 717, 723 (81 SC 1639, 6 LE2d 751) (1960)." Messer v. State, 247 Ga. 316 (4) (276 SE2d 15) (1981).

In the present case, 22 prospective jurors were excused for cause. A majority of the 42 prospective jurors put upon defendant stated that they had been exposed to varying degrees of publicity. All stated unequivocally that they could put aside any opinions they had and reach a verdict based on the evidence. There is no merit in these enumerations.

2. Enumeration of error 5 contends the trial court erred in overruling her motion to suppress the evidence obtained from her motel room, statements given to arresting officers, and evidence obtained from the victim's car.

The defendant first argues that evidence obtained from the motel room on September 3 without a search warrant should be suppressed because rent had been paid in advance until September 5, and she and her husband were therefore still in constructive possession. The motel owner-manager found the key to defendant's room on the counter in the office on the morning of September 3, and upon inspection discovered that all of their personal belongings had been removed from the room, whereon he concluded that they had abandoned the premises. Having abandoned the premises, defendant no longer had any expectation of privacy, and may not complain of the entry and search of the room.

The defendant contends that her statement given to FBI agents in Florida should be suppressed because the arrest warrant was invalid for two reasons. First, that the justice of the peace system is unconstitutional because it operates under a fee system, and, secondly, that the justice of the peace who issued the warrant was disqualified because he was also a deputy sheriff.

Appellant's attack upon the present justice of the peace system is without merit. The Georgia statutes subsequent to the 1977 amendment satisfied the constitutional requirements set forth in Connally v. Georgia, 429 U. S. 245 (97 SC 546) (1977). Roberts v. State, 243 Ga. 604 (5) (255 SE2d 689) (1979).

The second contention of defendant--that the issuing magistrate was a deputy sheriff and hence disqualified from issuance of an arrest warrant--must be considered in light of all the facts and requirements of law as to arrest warrants.

In Thompson v. State, 248 Ga. 343 (SE2d 266) (1981), we disapproved of a per se rule in Fourth Amendment cases. In the present case the defendant was arrested in Florida pursuant to an FBI fugitive warrant issued in good faith reliance on the Georgia arrest warrant regular on its face. While there may have been some technical deficiency in the status of the issuing magistrate, we find nothing which would require suppression of the evidence obtained and of the statements of the defendant made at the time of her arrest. Michigan v. DeFillippo, 443 U. S. 31, 35 (SC , LE2d) (1979).

The remaining ground of defendant's motion to suppress concerned the evidence obtained from the victim's car. A defendant has no standing to complain of the search of premises or property of another. Cervi v. State, 248 Ga. 325 (2) (282 SE2d 629) (1981).

3. Enumerations of error 6 and 7 contend that the trial court erred in placing upon defendant the burden of proof as to her special plea of mental incompetency, and in using the word "sanity" rather than "competency" in his charge. The burden of proof upon a special plea is on the defendant. Banks v. State, 246 Ga. 178 (3) (269 SE2d 450) (1980); May v. State, 146 Ga. App. 416 (246 SE2d 432) (1978). Nor do we find any error in the charge on the special plea.

4. Enumeration of error 8 contends the trial court erred in denying defendant funds to employ a psychiatrist, field investigator and forensic criminologist. The defendant does not contest any of the evidence presented against her, nor was any showing made at the hearing held on the motion as to what benefits could be gained by granting her funds for the hiring of such experts.

We recently held in Sable v. State, 248 Ga. 10 (6) (282 SE2d 61) (1981), that: "A criminal defendant on trial for his liberty is entitled on motion timely made to have an expert of his choosing, bound by appropriate safeguards imposed by the court, examine critical evidence whose nature is subject to varying expert opinion." The defendant in this case made no contention that any critical evidence was subject to varying opinion, but in answer to the trial court's inquiry as to what further test he wanted stated: "At this point in time, no, there is not. If there is one, we will let the court know before the week expires." We cannot say, based upon this record, that the trial court abused its discretion in denying the motion for funds for expert witnesses. Messer v. State, 247 Ga. 316 (1) (276 SE2d 15) (1981).

5. Enumeration of error 9 complains of the admission in evidence of a letter written by defendant. The letter introduced at the guilt-innocence phase of the trial was written to the chief jailer. The letter was not solicited, nor was it the result of any interrogation, and sought to relieve her husband of any blame for the murder and rape of the victim by stating that she had coerced him into participating in the crimes. The trial court did not err in admitting this letter. Stevens v. State, 247 Ga. 698 (7) (278 SE2d 398) (1981).

6. Enumerations of error 11 and 12 contend the trial court erred in admitting testimony of a conversation with defendant's husband in her presence, and the charge of the court on conspiracy.

The testimony objected to occurred on the night of the crime when the witness, the defendant and her husband were riding around and he testified as follows: "He

asked me if I knew where I could get him a girl at. Q. What did you reply? A. I said, won't your wife get mad at you for talking like that? No, as long as she gets to go with her first." This testimony had a direct bearing on the contended conspiracy between defendant and her husband. The statements made by the co-defendant in the presence of appellant were admissible. See Sprouse v. State, 242 Ga. 831 (2) (252 SE2d 173) (1979), and cits. There was no error in admitting this testimony, or in the charge concerning conspiracy.

7. Enumeration of error 1 contends the trial court erred in allowing the testimony of Dr. Henry Adams at the sentencing phase of her trial. The defendant argues that the only way an expert witness may give his opinion is in response to hypothetical questions based upon facts in evidence.

It has long been the rule in this state that an expert witness may give his opinion as long as he states the facts on which he bases his conclusion. The fact that an expert's opinion may be based in part on facts not in evidence goes to the weight and credibility, not to its admissibility. Redfield v. State, 240 Ga. 460 (1) (241 SE2d 217) (1978) and cases cited. There is no merit in this enumeration of error.

8. Enumeration of error 10 complains of a letter introduced at the sentencing phase. The letter was written by defendant to her husband while both were in jail awaiting trial. The letter was given to a guard for delivery. Under rules of the jail imposed by the sheriff, all communications between prisoners were to be read and anything out of the ordinary reported to the sheriff. The letter contained an incriminating statement and the

note also contained a statement indicating knowledge that notes passed between them were read by the guards.

The defendant objected to the admission of this letter, contending it was a confidential communication between husband and wife under Code Ann. § 38-418 (a, 1), and excludable. The trial court excused the jury and held a hearing in which it found that there must be some expectation of confidentiality to be privileged under this court's holding in Lowry v. Lowry, 170 Ga. 349 (6) (153 SE2d 11) (1930). The court further found that the note itself indicated that their messages were being intercepted and that defendant had no reasonable expectation of confidentiality. The trial court's finding that the letter was not a confidential communication being supported by the evidence, we find no merit in this enumeration of error.

9. Enumeration 13 contends it was error to allow the State to introduce a prior conviction for simple assault at the sentencing phase without prior notification as required by Code Ann. § 27-2503. The State introduced evidence of a prior guilty plea to the charge of simple assault after the defendant had presented several witnesses who testified as to her nonviolent nature.

The testimony introduced by defendant was in the nature of character evidence and it was not error to admit this evidence as rebuttal. Hearn v. State, 145 Ga. App. 469 (2) (243 SE2d 728) (1978); Mize v. State, 240 Ga. 197 (6) (240 SE2d 11) (1977).

10. Enumeration 14 contends the Unified Appeal Procedure is unconstitutional. All of defendant's contentions have been decided adversely to her in Sliger v. State, 248 Ga. 316 (282 SE2d 291) (1981) (cert. den.

U. S. (102 SC 1442, LE2d). There is no merit in this enumeration of error, and the trial court did not err in overruling her motion for new trial as contended in enumeration 15.

SENTENCE REVIEW

As required by Georgia Laws, 1973, p. 159, et seq., (Code Ann. § 27-2534 (c) (1-3)), we have reviewed the death sentence in this case. We have considered the aggravating circumstances found by the jury and the evidence concerning the crimes and the defendant pursuant to the mandate of the statute. We conclude that the sentence of death imposed in this case was not imposed under the influence of passion, prejudice or any other arbitrary factor.

The defendant contends that under the holding of the United States Supreme Court in Eddings v. Oklahoma, U. S. (102 SC 869, 71 LE2d 1) (1982), that the court should have been instructed to consider the person of the defendant as a young and deprived girl with a sad and complex life. In the sentencing phase the court allowed the defendant to present several witnesses who testified as to her deprived upbringing, and to other factors in her childhood. There is no merit that the jury was precluded from considering these factors, as they were advised to consider all the evidence presented in mitigation.

The jury found the following aggravating circumstances: The offense of murder was committed while engaged in another capital felony, to wit, rape, and that the murder was outrageously, wantonly vile and inhuman in that it involved torture, depravity of mind and battery to the victim. The jury was instructed

separately as delineated by this court in Hance v. State, 245 Ga. 856 (3) (268 SE2d 339) (1980). The jury made a specific finding and found all three factors of Hance, supra. We have reviewed the record and find that the aggravating circumstances as found were fully supported by the evidence, under the stimulus of Jackson v. Virginia, 443 U. S. 307 (99 SC 2781, 61 LE2d 560) (1979).

We have reviewed the charge of the trial court to the jury in this case and found it not subject to the defects dealt with in Hawes v. State, 240 Ga. 327 (240 SE2d 833) (1977), or in Fleming v. State, 240 Ga. 142 (240 SE2d 37) (1977).

This court has independently reviewed the record as mandated by the Unified Appeal Procedure and has found no addressable error with the exception of the issues raised in Enmund v. Florida, U. S. (SC , LE2d) (Case No. 81-5321), recently decided by the U. S. Supreme Court. The evidence in this case shows that prior to leaving the crime scene where the victim was murdered, this defendant cut the victim across the abdomen with the murder weapon and when asked why, she stated that this was the only place left to cut her and that "that girl sure didn't want to die." Therefore no issue is raised as to the direct and active participation of this defendant in the murder.

In reviewing the death penalty in this case, we have considered the cases appealed to this court since January 1, 1970, in which a death or life sentence was imposed. We find that similar cases listed in the appendix support the affirmance of the death penalty.

This was a particularly brutal murder in that the victim was raped, sodomized and stabbed 97 times after

letting the defendant into her motel room in the early morning hours under the pretense that something was wrong with her baby. Thereafter the defendant and her husband robbed the victim and stole her automobile for the purpose of making their escape from the scene. The 15 cases in the appendix in which the death penalty was imposed support the death penalty in the case. All of these cases involve the deliberate, unprovoked killing of a victim in conjunction with a sex crime, and thus show the willingness of the jury to impose the death penalty similar circumstances.

The crimes of Janice Buttrum can only be described as butchery and barbarism. The sentence of death is neither excessive nor disproportionate.

Judgment affirmed. All the Justices concur, except Hill, P.J., who concurs in the judgment only. Gregory, J., dissents to division 7 and the affirmance of the death sentence.

APPENDIX

McCorquodale v. State, 233 Ga. 369 (211 SE2d 577) (1974); Jarrell v. State, 234 Ga. 410 (216 SE2d 258) (1975); Gibson v. State, 236 Ga. 874 (226 SE2d 63) (1976); Coleman v. State, 237 Ga. 84 (224 SE2d 911) (1976); Dix v. State, 238 Ga. 209 (232 SE2d 47) (1976); Peek v. State, 239 Ga. 422 (238 SE2d 12) (1977); Spraggins v. State, 240 Ga. 759 (243 SE2d 20) (1978) (affirmed on resentencing, 243 Ga. 73 (252 SE2d 620) (1979); Moore v. State, 240 Ga. 807 (243 SE2d 1) (1978); Presnell v. State, 241 Ga. 49 (243 SE2d 496) (1978) (affirmed after remand from U. S. Supreme Court, 243 Ga. 31 (252 SE2d 625) (1979); Johnson v. State, 242 Ga. 649 (250 SE2d 394) (1978); Collins v. State, 243 Ga. 291 (253 SE2d 729) (1979) (affirmed on resentencing, 246 Ga. 261 (271 SE2d 352) (1980); Bowen v. State, 244 Ga. 495 (260 SE2d 855) (1979); Brooks v. State, 244 Ga. 574 (261 SE2d 379) (1979) (addendum 246 Ga. 262 (271 SE2d 272) (1980); Tucker v. State, 244 Ga. 721 (261 SE2d 635) (1979); Nelson v. State, 247 Ga. 172 (274 SE2d 317) (1981).

ENUMERATION OF ERROR NO. 1

THE TRIAL COURT ERRED WHEN IT PERMITTED THE TESTIMONY OF DR. HENRY ADAMS AS TO HIS DIAGNOSIS AND PROGNOSIS OF THE APPELLANT BASED EXCLUSIVELY UPON HEARSAY EVIDENCE NOT BEFORE THE JURY

The Legislature of Georgia has provided for use of the expert witness quite specifically. "The opinions of experts, on any question of science, skill, trade, or like questions, shall always be admissible; and such opinions may be given on the facts as proved by other witnesses." Ga. Code Ann. Sec. 38-1710. The basis for the opinion of Henry Adams was not "facts proved by other witnesses," but was set out in response to the prosecutor's questions as follows:

"Q: Doctor, have you had occasion to make professional studies of Janice Buttrum, as is relevant to the Murder and Rape of Demetra Parker?

A: Yes, I have.

Q: All right, what did you do pursuant to your study?

A: I reviewed all the F.B.I. Reports, her confessions, reports from Central State Hospital, and I looked at the autopsy report, and some of the photographs of the victim. . .

In order to fairly access the appropriateness of the testimony of Henry Adams, it may be useful to consider more likely testimony which could have been offered at the time of the sentencing trial. As a background for this supposition, this Court's statement in Smith V. State may be useful:

> "But we think it is also true that if the nature of the question is such that the factors leading to a conclusion are not known to the common or average man, but are among those things shrouded in the mystery of professional skill or knowledge then the light of that knowledge should not be withheld from the jury because of such a fine distinction in the ordinary rules of evidence." (citing Metropolitan Life Ins. Co. V. Saul, 189 Ga. 1, 9, 5 S.E.2d 214 (1939).

As the record and testimony of Appellant's competency trial indicate, she underwent a lengthy and thorough evaluation at Central State Hospital. Had the evidence of Henry Adams been offered through the testimony of Dr. Perez (T. Competency Trial, p. 550-573), we would expect to argue at this juncture that it was improper for his opinions to invade the province of the jury and inappropriated to speculate about the Appellant's future behavior. If the

facts which the evidence in the case tends to establish." The Georgia Law of Evidence, Thomas F. Green, Jr., Section 111, 272 (1957, supp. 1980).

Dr. Adams gathered his hearsay evidence, determined its admissibility and weight, decided the fate he would select for Janice and made his recommendation to the jury. Dr. Adams went so far as to reject the conclusions of Dr. Perez and his team of psychiatrists, psychologists and nurses (none of which was before the jury), and expressed his own frightening predictions of Janice's future. This is astounding, and patently unfair. Nevertheless, this man was qualified by the trial court as an expert and was allowed to speculate as to the future of an eighteen year old girl without ever having seen her or having been advised of the facts before the jury, all with the court ascribed enhanced status of expert.

Once it is recognized that the testimony of Henry Adams was improper perhaps the significance of the error should be addressed. Henry Adams boldly advised the jury that in his expert opinion that Janice Buttrum would likely repeat her crime (T. Trial Vol. III, pp. 1823). The trial Judge defined then charged the jury to consider this "depravity of mind" to the jury in a manner which keyed in with Adams' diagnosis and their deliberation of her penalty (T. Trial Vol, III, pp. 2209-2210). Henry Adams was considered to be so important to the prosecutor's case that he was the only witness called in aggravation. Beyond any doubt, his testimony was not harmless.

ENUMERATION OF ERROR NO. 2

APPELLANT'S DEATH SENTENCE CONSTITUTES THE IMPOSITION OF CRUEL AND UNUSUAL PUNISHMENT IN THAT IT WAS IMPOSED BY A JURY THAT WAS INFECTED BY EMOTIONALISM, PASSION AND PREJUDICE AND DID NOT RECEIVE CLEAR OBJECTIVE SENTENCING GUIDELINES.

It has been held that the imposition of the death penalty is not per se cruel and unusual punishment violative of the Eighth Amendment to the Constitution of the United States. However, a death sentence that is imposed in an arbitrary or capricious manner, by a jury improperly guided in its discretion is cruel and unusual punishment. Gregg v. Georgia, 428 U.S. 153, 96 S. Ct. 2909 (1976); Godfrey V. Georgia, 446 U.S. 420, 100 S Ct. 1759 (1980), and if the sentence of death was imposed under the influence of passion, prejudice or any other arbitrary factors then it shall be vacated. Ga. Code Ann. Sec. 27-2537(c)(7).

The following events which preceded Appellant's receiving the death sentence, when collectively considered, evidence the presence of an atmosphere of emotionalism, passion and prejudice which Appellant contends affected the jurors' decision to impose the death sentence.

1). The tremendous amount of pretrial publicity, coupled with the actions of the Trial Court in response

sentence be, and appear to be, based on reason rather than on caprice."

Id. at 430 U.S. 356.

Wherefore, the Death Penalty Statute found at Georgia Laws 1973, pp. 159-165; Georgia Code Ann. Sec. 27-2534.1, et. seq., as applied to defendant in this case yielded an arbitrary sentence that was the product of emotionalism, passion and prejudice contrary to Article I, Sec. I, Par. II and III of the Georgia Constitution, Ga. Code Ann. Sec. 2-102, 2-103 and the Eighth and Fourteenth Amendments to the United States Constitution. Further, the process by which the jury is allowed to exercise subjective discretion in returning a death penalty violates the same constitutional protections. Ga. Laws 1974, pp. 352, 353; Ga. Code Ann. Sec. 27-2302.

7). The trial court allowed in evidence testimony by Dr. Henry Adams that Appellant was an anti-social personality, as well as a case of paraphilia sexual sadism (T. Trial Vol. III, p. 1822, see Enumeration of Error No. 1). He then stated he would expect it (similar acts) to continue. (T. Trial Vol. III, p. 1823). For reasons set out in Enumeration of Error No. 1 allowing this testimony was error; the magnitude of the statements made by Dr. Adams obviously aroused the emotions and

prejudice of the jury.

8). The improper remarks of the District Attorney in his closing argument in the trial in chief and the sentencing trial also caused the jury to be motivated by passion and prejudice.

Mr. Williams stated:

> "Defense? There is none. There has not been one iota of evidence to indicate that this Defendant did not do what she is charged with. . ."
> (T. Trial Vol. II, p. 1713).

Mr. Williams later in his closing argument to the jury during the trial in chief read a quote from ". . .Former Federal Judge of this State and Attorney General of the United States", stating that:

> "We're just not tough enough or strong enough to have a safe society" . . .
> "We're constantly ringing out hands about how we can rehabilitate people, and worry very little about the victims of crime. The truth is: There are alot of bad people who ought to be locked up to protect the rest of us, and unless we're willing to face that, then we really don't deserve to have a safe society"
> (T. Trial Vol. II, p. 1717)

These transcript excerpts illustrate the obvious . . . experts often differ in their opinions on matters within their field of expertise. In this type of situation, where there is "critical evidence whose nature is subject to varying expert opinion", the Court in Barnard directed that the trial court appoint an expert of the defendant's own choosing to insure that the defendant receives his due process rights (514 F.2d 744 at 746, emphasis supplied). Should the protection of due process rights be more zealously guarded in death cases? Woodson V. North Carolina, 428 U.S. 280, 96 S.Ct. 2978 (1976), and Gardner V. Florida, 430 U.S. 349, 97 S.Ct. 1197 (1977) unequivocally answer in the affirmative.

Appellant's expert assistance was limited by her financial resources. Barnard mandates that the availability of expert testimony required in presentation of an effective defense not be restricted by indigency. In United States V. Pate, 345 F.2d 691 (7th Cir. 1965), the Court stated "the denial of a reasonable request to obtain the services of a necessary psychiatric witness is effectually a suppression of evidence violating the fundamental right of due process." 345 F.2d 691 at 695.

The trial court's failure to appoint expert assistance for the Appellant not only denied her due process of law, but denied her her Sixth Amendment right to effective assistance of counsel as well. In Hintz V. Beto, 379 F.2d 937 (5th Cir. 1967) the Court states "that effective

and minimally effective representation of counsel'" Blake at 20, quoting 488 F.2d 1154 at 1163. Appellant contends that this interrelation is even more critical in capital cases. Sending the Appellant to a State facility for psychiatric evaluation or examining her through an appointed expert is not an acceptable alternative to the hiring of an independent psychiatric expert. This is apparent when, under Georgia Law, any statements made by the Appellant to these State employees are not privileged in accordance with Ga. Code Ann. Sec. 38-418. Massey V. State, 226 Ga. 703 (1970); Moody V. State, 244 Ga. 247 (1979). The psychiatrist or psychologist may later testify at trial to any and all incriminating statements made by a patient.

Appellant's right to effective assistance of counsel includes access to at least such independent experts as necessary to rebut the power of the State. Despite the attempts of Appellant's counsel, these needs were not adequately met. The Court erred in denying the Appellant expert assistance equivalent to that provided to the State.

H. THE TRIAL COURT WAS UNDER NO STATUTORY NOR CONSTITUTIONAL DUTY TO PROVIDE APPELLANT WITH FUNDS TO EMPLOY A "PRIVATE" INDEPENDENT PSYCHIATRIST, FIELD INVESTIGATOR AND FORENSIC CRIMINOLOGIST UNDER THE FACTS OF THIS CASE. (Appellant's Enumeration of Error No. 8).

Appellant alleges that the trial court erred in refusing to provide her with additional funds to employ a "private" or "independent" experts in the preparation of her defense.

On February 24, 1981, Appellant's counsel along with her husband's attorney reasserted their Motion for Funds to Employ a Private Psychiatrist, Field Investigator and Forensic Criminologist. The trial court had previously reserved ruling on Appellant's Motion for an Independent Forensic Criminologist, but had directed the crime lab to retest anything that Appellant desired, or conduct additional tests that Appellant's counsel might deem necessary. (T. Motion, 93-94, 95-96 on February 24, 1981). On the issue on appointing an independent forensic criminologist the court inquired of counsel for Appellant's

husband, Mr. Milton as follows:

> Court: "Is their some further test you want done?
>
> Mr. Milton: At this point in time, no, there is not. If there is one, we will let the court know before this week expires. It is not within the scope of this motion so I don't believe that --
>
> Court: (interposing) Well, why don't you -- if you don't want any further tests done, why do you want funds -- this motion is to employ a field investigator, forensic scientist, and what else?
>
> Mr. Milton: Yes sir, as stated."

(T. Motion at 94 of February 24, 1981).

Appellant has failed to show this Court what additional forensic testing if any was necessary for an adequate defense on behalf of the Appellant. Also, all of the Appellant's incriminatory statements acknowledged that the victim remained

Q What is a paraphilia?

A Again, this is where an individual might cause an inanimate object, and non-consenting adults pain and humiliation as a method of achieving sexual excitement and arousal.

Q Is sexual sadism a type of paraphilia?

A Yes, it is.

Q What is sexual sadism?

A This is when the individual becomes excited or turned on by the suffering humiliation and pain of the victim, typically a non-consenting individual. When the disorder really becomes severe, they may torture, kill, mutilate their victims. It is a repetitive kind of activity that continues until the individual is apprehended, or stopped in some way or another.

Q Are there different forms of sadism?

A Yes, there is. One, a difference in severity. In some cases, it's enough with some of these things that the individual simply be shamed or humiliated to turn them off. In other cases, it becomes quite savages--rape and these kind of cases. The types can vary extensively from the individual who gets sexually excited by urinating on someone to the individual who engages in rape with harm

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coming to the victim, being turned on by the blood, or whatever.

Q At what age do these forms of sadism generally begin?

A You can see them fairly early. It's usually around the age of puberty when the sexual drive begins to manifest itself; because of the kinds of experiences they may have had, they begin to get turned on to this. It's not unusual for this kind of disorder to increase in intensity, particularly when it's associated with the anti-social personality, so that they have to have more, and more, and more extreme forms of this activity in order to get excited or turned on.

Q What is the course of sexual sadism when it's practiced with a non-consenting partner?

A Well, it would continue; it's like any other sexual activity. If that's what turns them on, then that's what they're going to do. It is a biological drive with biological rhythm. It's like heterosexuality, in that sense.

Q All right. Doctor, dealing with sexual murder, is there a relationship between the murder and the sex act?

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MR. BROWN: If it please the Court, Your Honor, may I interrupt and again object to this whole line of questioning to be irrelevant in a sentencing/aggravation phase. This is the case of Janice Buttrum; we're not trying -- we're not learning a course in psychology. I don't think this is relevant to the issues before the Court.

THE COURT: All right, I'll take your objection under advisement and we'll see.

Q Doctor, dealing with sexual murder, is there a relationship between the murder and the sex act?

A Yes, because the murder is -- occurs because this is the way -- it is the sex act, to some extent, in these extreme cases.

Q All right. How do these individuals induce this sexual pleasure?

A I beg your pardon?

Q How do these individuals induce their sexual pleasure?

A By the pain of the victim.

Q All right. Dr. Adams, have you had occasion to make professional studies of the Defendant, Janice Buttrum,

as is relevant to the Murder and Rape of Demetra Parker?

MR. FAIN: Excuse me, Your Honor. I would object to that question on the grounds that we've stated before, that this gentleman is unlicensed; he -- there has been no background laid as to what he knows about any of this. He has no background or basis to make such an opinion. We think such an opinion would be totally improper. We think this gentleman testifying as an unlicensed practitioner is in violation of the Law and violates our client's right to due process and to a fair trial under the Fifth, Sixth, Eighth, and Fourteenth Amendment.

THE COURT: I'll overrule your objection. Proceed.

Q Doctor, have you had occasion to make professional studies of Janice Buttrum, as is relevant to the Murder and Rape of Demetra Parker?

A Yes, I have.

Q All right, what did you do pursuant to your study?

A I reviewed all the F.B.I. Reports, her confessions, reports from Central State Hospital, and I

looked at the autopsy report, and some of the photographs of the victim.

Q Do you recall the items in Central State's report that you reviewed?

A Yes ==

MR. BROWN: (Interposing) If it please the Court, again I object. We are talking about hearsay evidence, and they're not admitted before this Court. And it's totally inappropriate for him to render an opinion that's not even a hypothetical opinion, on hearsay evidence, items that are not in evidence before this Court and Jury.

THE COURT: Overruled.

Q Do you recall what you reviewed in the Central State report—the items that you reviewed?

A Yes. The social history, the psychiatric report, the psychological evaluation, ward notes.

Q Did you have occasion to look at photographs of the crime scene?

A Yes, I did.

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Q Have you come to certain conclusions about the Defendant, based upon your study and your background--professional background?

A Yes, I have.

MR. FAIN: Excuse me, Your Honor. I would object to that opinion on basically -- I gather he's talking about basing his opinion on opinions of other people and upon declarations of third and fourth parties. We feel that any opinions --

THE COURT: (Interposing) Well, I'm going to give you a chance to cross-examine him.

MR. FAIN: I understand that, Your Honor; but I feel that we need to raise the objection now, and that we would raise the objection that, one, it's based upon hearsay; two, it's based upon conclusions made by others—opinions of others, people not under his control or authority; that it contains -- based upon facts not in evidence, facts not supported by the evidence; that the testimony is irrelevant and calculated

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to inflame and prejudice the Jury; and that it's an improper area for expert opinion, and it goes to, I gather, the state of mind of the Defendant. And, Your Honor, we feel that all of this is improper, and to allow this gentleman to go on would be to deny Janice Buttrum her rights to due process and to a fair trial, as stated in the Fifth, Sixth, Eighth, and Fourteenth Amendments, and we would make that objection, Your Honor, at this time.

THE COURT: Overruled.

Q Have you come to some conclusions about the Defendant based upon your studies?

A Yes, I have.

Q All right. Dr. Adams, what is, quote, "stimulous hunger"?

A This is a term used to describe the asocial personality for they're constantly hungry for stimulation, bored; and, therefore, they're likely stir up difficulties, get involved in a lot of asocial activity--drugs, sex, whatever--in order to excite them, turn them on.

1820

Q How does that term relate to Janice Buttrum?

A From the evidence that I have, that is one aspect of her personality.

MR. FAIN: Your Honor, I don't want to continue to jump up and down. If the Court would just recognize a continuing objection based on previous grounds and reasons stated?

THE COURT: All right.

MR. FAIN: I'm sorry, I didn't understand.

THE COURT: That'll be fine.

MR. FAIN: Would the Court recognize --

THE COURTP (Interposing) I recognize your continuing objection.

MR. FAIN: Okay, thank you, Your Honor.

Q What does the term "sociopath" mean?

A Essentially, that's an earlier term that was used by the DSM II, the Classification Manual, that has now been replaced by the Anti-social personality in the DSM III, the latest version.

Q Okay. What does polymorphous sexual perversion mean, that phrase?

A It essentially means that the individual will engage in almost any activity that will turn them on of a sexual nature, varying from heterosexual to homosexual,

1821

to whatever.

Q All right. Now, you referred to the DSM III, what does that mean, and what is it?

A That's the official classification of the American Psychiatric Association that's used commonly by Mental Health personnel.

Q For what purpose?

A To classify and diagnose cases.

Q Have you come to some clinical impression of the Defendant, Janice Buttrum, based upon your investigation?

A Yes. Essentially, based on the evidence I have, I would call her an anti-social personality, as well as a case of paraphilia sexual sadism.

Q All right. Based upon your investigation, your background, and your expertise in this area, do you have an opinion as to the potential for other acts?

MR. FAIN: Excuse me, Your Honor. Of course, we would renew our previous objections as the Court has stated they would make that and understand that to be a continuing objection; but we would also add that this is a totally improper area for expert testimony. I

1822

gather he's about to speculate or predict some sort of criminal behavior and, Your Honor, we just feel that that's totally improper, on the same Constitutional grounds that we urged before.

THE COURT: Overruled.

Q All right, let me ask you that question again. Dr. Adams, based upon your investigation into this Defendant, your professional background, your expertise in the area of sexual disorders, and your clinical impression as to sexual sadism in this particular case, do you have an opinion as to the potential of other acts?

A Part of the definition of sexual sadism is repetitive acts; and yes, with this kind of diagnosis it's kind of -- you would expect it to continue.

MR. WILLIAMS: That's all I have.

MR. BROWN: If it please the Court, at this point in time, I would respectfully move for a mistrial on the same basis of the Constitutional arguments which Mr. Fain previously made, and which I think the Court considered to be continuing.

THE COURT: All right, I'll overrule your Motion for Mistrial. I'll also

1823 overrule your objection to the whole

of the witness's testimony as being irrelevant that he made and I said I'd take under advisement.

CROSS-EXAMINATION: Mr. Brown

Q Dr. Adams, as a general rule, do you perform such explicit and potentially harmful diagnoses, or potentially serious diagnoses as you have done of Janice Buttrum on a regular basis, without ever seeing or personally talking to your patient?

A Yes, it is done, and it's done fairly common. The decision for me not to see her is yours counselor.

MR. BROWN: If it please the Court, that is unresponsive and untrue, and I would ask that that be stricken from the record.

THE COURT: Well, your question was: Did he do it? And he responded that: "It's done"; is that the unresponsiveness?

MR. BROWN: He responded that I had denied him the opportunity to evaluate my client. That is untrue.

1824

THE COURT: Well, I'll strike that from the record and instruct the Jury to ignore that portion of his answer.

Q And do I understand, then, Dr. Adams, that you regularly do this sort of evaluation without seeing the patient?

A I have done it; it has been done in other cases.

Q And do you feel like it's reliable?

A It's fairly accurate.

Q Well, I mean how accurate? Janice Buttrum is on trial for her life.

A Well, in terms of how you evaluate a patient, you don't only take their words, there's a great deal of background evidence and other data that goes into it, as well as the examination. Granted, if you actually examine the patient, you would feel much more comfortable about the accuracy of your opinion.

Q And you see the need in this case, from what you said a moment ago, that that would be appropriate?

A Certainly it would be.

Q Now, you considered reports from Central State Hospital, is that also correct? Was that part of the

1825

Q Yes sir, the second page of what I just handed you.

A Yes, I see that.

Q What is the final diagnosis?

A It says "No medical diagnosis". Can I also refer to the other reports that's in this document?

Q Are you referring to the preliminary report on admission where there was a possibility of anti-social personality, which was later ruled out?

A I'm referring to ==

Q (Interposing) Is that what you're wanting to tell us about?

A I'm referring to the initial ==

MR. WILLIAMS: (Interposing) Well, Your Honor, I think he's arguing with the witness.

THE COURT: Let him finish his answer before you ask him the next question.

A I'm referring to the total document "Psychiatry Report" -- excuse me, the Psychological report and others. But, I went through all of their information, and simply because they did not decide that there was no medical diagnosis--I used their facts--I don't have to come to their

1827

same conclusions, counselor.

Q Certainly not; but you're aware that in those reports which you used that there was a team evaluating her. Are you familiar with how things are done at Central State on these type of evaluations?

A Since I was a consultant there for about five years, yes, I am.

Q Okay, so it's done with an observation over a period of time; is that correct?

A Right.

Q Clinical observation, ward observation, testing; is that also correct?

A Right.

Q Several psychologists involved?

A Right.

Q And then, would you tell the Jury what a "staffing" is, as the term is used there?

A Essentially this -- uh-huh. This is essentially for psychiatrists, psychologists, nurses, ward attendants, and a group of people discuss the case.

Q And traditionally, before a final conclusion is reached is that what occurs at Central State?

A Right.

Q A staffing? Which means the input of the psychologists, the nurses, and the psychiatrists to come

1828

to a conclusion?

A Right.

Q And the conclusion in this case was no mental disorder, but you disagree with that; is that correct?

A I certainly do disagree with that.

Q Okay. From what you recall, is it also accurate that they observed Janice Buttrum for about seven weeks?

A Right.

Q Dr. Adams, with respect to reliability of what you're telling us, do you recall in your letter to the District Attorney on July the 30th, that you stated "That the conclusions"-- let me paraphrase it -- "that the conclusions that I have reached in this case should be viewed with caution since I have not examined the patient, and the evaluation is based largely on her case history that you went to me"; is that correct?

A That's correct.

Q Do you recall if you have ever made a written comment about this sort of diagnosis technique -- or diagnostic technique? Have you ever made a comment in any of your books?

1829

Q Isn't it awfully hard for you, without information from the time -- after the time she was seventeen -- may I assume that you don't have specific history of her after that time? You're making this -- let me rephrase the question. You're basing your diagnosis on what existed when she was seventeen, and then because she became eighteen, you just made another assumption and fit her into that category; is that right?

A I assumed she became eighteen.

Q But that's all the difference, I mean, there wasn't any ==

A (Interposing) That's the only difference. And with the earlier -- if you'll look at the earlier criterion, it fits that quite well; or, they're essentially the same diagnosis. The only thing that changes is the age.

Q Now, conduct disorders really don't rise to the level of personality disorders; isn't that correct?

A What do you mean?

Q They are not classified as personality disorders. Aren't conduct disorders listed elsewhere as kind of a ==

1844

A (Interposing) Childhood, adolescent, and other types of disorders.

Q Problems somebody might grow out of?

A Right.

Q You really don't want to affix a severe conclusion about a mental disorder on a younger person when they're still growing; isn't that correct?

A That's right. But, most of these disorders start at five, six, seven years of age.

Q And you really can't speak to what Janice Buttrum's condition or adjustment has been in Jail, and how that would affect your diagnosis? In other words, if Janice Buttrum has been able to make friends in Jail--get along with her cellmates--and adjust socially in that limited social atmosphere, she would be in contradiction to this diagnosis; is that correct?

A If that occurred. But, as a matter of fact, I talked to the female jailer and one of the prisoners today, and that has not occurred.

Q Okay, that would be total hearsay?

A Right.

Q From what two people said. You don't know about all the people she's been exposed to, or what she says; is that correct?

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MR. WILLIAMS: (Interposing) Well, Your Honor, she's his witness and he's leading her right through this thing. I'd ask her to answer the questions and be short, and explain them.

THE COURT: Well, I'll let him lead on these questions. But, now, when you get through with these, you need to ask questions on direct.

Q We talked about, and you understand, that Mr. Williams will have an opportunity to cross-examine you, don't you?

A Yes, I do.

Q And you still wanted to get up here and testify, isn't that right?

A Yes sir.

Q Janice, how old are you?

A Eighteen.

Q And when's your birthday?

A January 17th.

Q Of what year?

A 1963.

2031

THE COURT: There weren't any Motions. Were there any Motions for Mistrial?

MR. BROWN: Yes sir. We made a Motion for Mistrial with respect to the testimony tendered of Dr. Adams.

THE COURT: Okay.

MR. BROWN: And also on the basis of his qualifications as an expert in this Court.

THE COURT: All right.

MR. BROWN: At this point in time, we would renew that Motion on the basis of the same Constitutional objections we had then, and would also again move to strike his testimony in view of our position that he did not qualify as an expert witness according to the standards of the State of Georgia.

THE COURT: All right, I'll overrule and deny your Motion. What's your next Motion?

MR. FAIN: Your Honor, we would just simply move for a Directed Verdict in regard to all of the aggravating circumstances,

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to you on Saturday, unlike any eighteen-year-old female you or I have ever met or ever seen. Again, as I said to you before, I submit that there are two Janice Buttrams: One that you've been able to look at and see throughout this trial, and one who is a deviant pervert, a murderer, and a butcher. Do not be fooled by a pretty package. You heard about what a terrible background she came from. Well, there are literally thousands and millions of people who have come from poor, bad backgrounds who have become good, solid, law-abiding people. You and I both know some. That is no excuse for murder, and rape, and a blood bath on a nineteen-year-old girl. Pillars of the community don't commit brutal murders and participate in sadistic rape rituals. The lawyers want you to feel sorry for her. But, you stated at the very beginning that you believe in capital punishment and that you could return a death verdict against a female. Consider this: How bad does a case have to be before you can return a death verdict against her? How bad does it have to be? Can you imagine anything any worse than what you have heard in this case? Consider who was leading who. Who was the

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off without her. Potentially, could do it again. And yes, she's female, but Demetra Faye Parker is just as dead as she would have been had she first been stabbed, and stabbed mostly by a man. Finally, you've been asked to feel sorry for Janice Buttrum. Does Janice Buttrum feel sorry for anybody else? Did she ever express any regret for Demetra Parker? Did she ever express any remorse for her acts? Did she ever express any sorrow for Demetra's death? It's been one year ago tomorrow night—Tuesday night—that this occurred, and only yesterday did she make any outward and open statement of any sorrow, when she was in that seat in front of you fourteen. How can we feel any sorrow for her, when she cares less about us? Never a word of regret, not the first "I'm sorry". Who will be next? You? Your wife? Your daughter? Consider lack of remorse, until face-to-face with fourteen people. Consider who was really leading who? Who did all the action? Consider who was the real worst of the two. Demetra's life meant nothing. Did you hear anything that would indicate she felt bad about her acts, until yesterday--one year, almost to the day, from the crime. She has no more respect for you and this Court than she did for Demetra Faye Parker in the early morning hours of September the 3rd. Now, reasons for

punishment on young, teenage females? You have to look no farther than to the photograph of Demetra spread-eagle on the floor of a motel room. God save us all from Janice Buttrum. God save us all from the butchering mutilation of human flesh. God save us all from demoralizing indignation of a brutal rape. May Janice Buttrum never again haunt society. During the three-and-a-half days of voir dire, Mr. Fain and Mr. Brown talked to you about your church affiliation, view— religious views on capital punishment. Of course, we all know what, in the Old Testament, the Commandment "Thou Shalt Not Kill", "An Eye for an Eye", and so on. I found it interesting in Paul's letter to the Romans, Chapter 13, 1 through 4, where he wrote: "Let every person be subject to the governing authorities for there is no authority, except from God, and those that exist have been instituted by God. Therefore, he who resists the authorities resists what God has appointed, and those who resist will incur judgment. For rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? Then do what is good and you will receive his approval. For he is God's servant for your good, but

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doubt may arise out of a consideration of evidence, or from a lack of it, or insufficiency of the evidence. A reasonable doubt means just what it says, that is, a doubt of a fair mind, or an impartial Juror honestly seeking the truth. It is not an arbitrary nor capricious doubt, but it is a doubt arising from a consideration of the evidence, from a conflict in the evidence, or from a lack of evidence. As the Court has pointed out to you, a reasonable doubt is a doubt which is founded upon reason and for which a reason can be given. After giving consideration to all the facts and circumstances of the case, if your minds are wavering, unsettled, and unsatisfied, then that is the doubt of the Law.

I will go down these aggravating circumstances one at a time. Please remember that you must find beyond a reasonable doubt that one or more of these factual conditions existed in connection with the Defendant's perpetration of the act for which you have found her guilty, before the death penalty may be imposed.

The first is: That the offense of Murder was committed while the Defendant was engaged in the commission of another capital felony, to-wit: Rape. Georgia Law defines Rape, as follows: "A person commits rape when he has carnal

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knowledge of a female forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by a male sex organ. I charge you that even though the Rape Statute is designed to punish male offenders, a woman may be guilty of rape if she aids or abets in the commission of the crime. In this connection, I shall further charge you as to the definition of Parties to a Crime. Under our criminal Code, every person concerned in the commission of a crime is a party to that crime, and may be charged with and convicted of commission of the crime. A person is concerned in the commission of a crime only if he or she: (1) Directly commits the crime; or (2) Intentionally causes some other person to commit the crime under circumstances such that the other person is not guilty of any crime, either in fact or because of legal incapacity; or (3) Intentionally aids and abets in the commission of the crime; or (4) Intentionally advises, encourages, hires counsel, or procures another to commit the crime. In other words, to find that the offense of Murder was committed while the Defendant was engaged in the commission of rape, you would have to find beyond a reasonable doubt that this Defendant aided and abetted a male individual,

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that the male individual had carnal knowledge of a female forcibly and against the victim's will.

I have already defined carnal knowledge. Now I will address the elements of "forcibly and against the victim's will". Consent to sexual intercourse, obtained through a present or immediate fear of serious bodily injury to the alleged female victim involved is the equivalent of no consent at all, and an act of intercourse consummated under such circumstances cannot be said to have been committed with the consent of the alleged female victim. To accomplish a criminal act "with force" and "against one's will", as given to you in this Charge, there must have been such a physical overpowering of the person involved so that such person's ability to withstand or resist the act was overcome and such person was powerless to resist, and there must have been involved the use of threat or violence by the accused against such person through which there was instilled in the mind of the alleged victim a present and immediate fear of serious bodily injury to the extent that you find such person did not give concurrence to such act, as a result thereof. Consent that is not accomplished

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by force in the way and manner I have just Charged, though given reluctantly, is not with force or against one's will. It matters not how the consent was obtained, or how reluctantly that consent might have been given, if there was at least part of consent upon the part of the victim during the transaction.

The second circumstance the State charges is: That the offense of Murder was outrageously and wantonly vile, horrible, and inhuman, in that, it involved torture to the victim.

The third circumstance the State charges is: That the offense of Murder was outrageously and wantonly vile, horrible, and inhuman, in that, it involved depravity of mind of the Defendant. Now, Black's Law Dictionary defines a depraved mind as follows: An inherent deficiency in a moral sense and rectitude. Rectitude is defined as the quality or state of being straight or having moral ingegrity. Now, the way I've worded that, that definition may be confusing, so let me repeat it: Depravity of mind is inherent deficiency in moral sense and rectitude. Rectitude is defined as the quality or state of being straight or having moral integrity. The word "depraved" has also been defined

as "marked by corruption or evil, or especially perverted."

The fourth Statutory aggravating circumstance alleged is: That the offense of Murder was outrageously and wantonly vile, horrible, and inhuman, in that, it involved an aggravated battery to the victim. In this regard, it is the Law in Georgia that a person commits aggravated battery when he maliciously causes bodily harm to another by depriving him of a member of his body, or by rendering a member of the body useless, or by seriously disfiguring a body or a member thereof.

The Law requires that the presiding Judge give the Jury certain instructions in writing. I have prepared a written portion of this Charge as to the aggravating circumstance. These are typed out on separate sheets of paper and will be sent to you in the Jury Room. It's what those look like.

Now, if you do not find beyond a reasonable doubt that one or more of these aggravating circumstances which I have given you existed in the charged offense, then you would not be authorized to consider the penalty of death. In that event, the only penalty that the Law provides would be imprisonment for life, as provided by Law.

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or leniency which may be provided by Law, but you are simply to consider the sentence of death to mean death, and the sentence of life to mean life imprisonment.

The sentence to be imposed in this case is a matter entirely in your discretion. You may provide for a life sentence for this accused for any reason that is satisfactory to you. You may only impose the death sentence if you find beyond a reasonable doubt that one or more of the aggravating circumstances existed. You can only impose the death penalty if you do find that one or more of the aggravating circumstances I have submitted to you existed, but even if you find one or more to exist, it is not mandatory upon you to impose the death penalty. The Law vests the exclusive right to the Jury to make or withhold a recommendation of a death sentence.

Now, Ladies and Gentlemen of the Jury, I further Charge you that summation and argument of counsel is not evidence, and will not be considered as such. You may consider it or not, as you choose. In any event, the verdict must be based upon the evidence in the case as you find it, and not

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THE COURT: All right, if you'll hand it to the Clerk, please.

(VERDICT FORM TENDERED TO CLERK AND THEN TO COURT)

THE COURT: "In the Superior Court for the County of Whitfield, State of Georgia, State of Georgia vs. Janice Buttrum, Indictment 14,029, PUNISHMENT VERDICT OF JURY ON COUNT I - MURDER: We, the Jury, recommend and affix the Defendant's punishment as follows: B. Death. We further find the following aggravating circumstances: (1) The offense of Murder was committed while the Defendant was engaged in the commission of another capital felony, to-wit: Rape. (2) The offense of Murder was outrageously and wantonly vile, horrible, and inhuman, in that, it involved torture to the victim. (3) The offense of Murder was outrageously and wantonly vile, horrible, and inhuman, in that, it involved depravity of mind of the Defendant. (4) The offense of

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IN THE SUPERIOR COURT OF

WHITFIELD COUNTY

STATE OF GEORGIA :

vs. : CASE NO: 14,029

JANICE BUTTRAM :

ORDER

Defendant's Motions in the above-styled case having come on for hearing on the 23rd day of October, 1980, the same having been argued, and after consideration of same, the Court hereby:

1. Grants the defendant's Demand for Copy of Bill of Indictment and List of Witnesses.
2. Denies the defendant's Motion and Amendment to Motion for Funds to Employ a Field Investigator, A Forensic Criminologist and a Private Psychiatrist to Participate in the Defense Preparation and Trial.
3. Grants the defendant's Motion to Continue Arraignment.

SO ORDERED, this the 27 day of October, 1980.

J.S.C.C.C.

FILED & RECORDED
WHITFIELD COUNTY GA.
OCT 28 9 32 AM 80
CLERK OF SUPERIOR COURT

IN THE SUPERIOR COURT OF

WHITFIELD COUNTY

STATE OF GEORGIA	:	
	:	
vs.	:	CASE NO: 14,029
	:	
JANICE BUTTRAM	:	

ORDER

Defendant's Motion for Funds to Employ a Field Investigator, a Forensic Criminologist and a Private Psychiatrist to Participate in the Defense Preparation and Trial of the above Matter, and the Amendment to Motion for Funds to Employ a Field Investigator, and a Private Psychiatrist to Participate in the Defense Preparation for Trial for the above Matter; having come on for hearing before this Court February 24, 1981, the same having been heard and considered, is hereby DENIED, after being re-urged.

However, upon defendant's later reasonable request to the Court, the Court will direct the Crime Lab to test or re-test any evidence which the defendant reasonably feels ought to be tested or re-tested.

SO ORDERED, this the 25 day of February, 1981.

CHARLES A. PANNELL, JR.
JUDGE, SUPERIOR COURT
CONASAUGA JUDICIAL CIRCUIT

FEB 25 11 47 AM '81

IN THE SUPERIOR COURT FOR THE COUNTY

OF WHITFIELD, STATE OF GEORGIA

THE STATE OF GEORGIA	)	INDICTMENT NO. 14,029
	)	
VS:	)	
	)	
JANICE BUTTRUM,	)	
	)	
Defendant	)	

A P P E A R A N C E S:

FOR THE STATE: HON. STEPHEN A. WILLIAMS
District Attorney
Conasauga Judicial Circuit
Dalton, Georgia 30720

FOR THE DEFENDANT: J. MIKE BROWN, ESQUIRE
Attorney at Law
101 Thornton Avenue
Dalton, Georgia 30720

MOTIONS
HON. CHARLES A. PANNELL, JR.
JUDGE SUPERIOR COURT
CONASAUGA JUDICIAL CIRCUIT
PRESIDING

August 19, 1981

TRANSCRIPT

PROCEEDINGS:

THE COURT: All right, this is another hearing on the case 14,029, State of Georgia vs. Janice Buttrum. It's my understanding there have been two more motions filed by the Defendant, which I need to hear and rule on. Is that correct, Mr. Brown?

MR. BROWN: That's correct, sir.

THE COURT: All right, which motion do you wish to take up first?

MR. BROWN: Your Honor, the --

THE COURT: (Interposing) I'm not sure I have your motions. (Pause) Well, I think the original of your motions is in the Clerk's file. I have a copy. We've got a new girl in the Clerk's Office in charge of criminal files now. I have a Motion for Continuance and a Second Amendment to Motion for Funds to Employ Field Investigator, Forensic Criminologist and Private Psychiatrist to Participate in Defense Preparation for Trial of the Above Matter, and Amendment

to a Motion for Private Psychiatric Examination and Testing.

MR. BROWN: Yes sir.

THE COURT: Which one do you want to take up first?

MR. BROWN: The one you just read first, Your Honor; it's a rather long title.

THE COURT: Okay.

MR. BROWN: That, primarily, is a Motion to allow the Defense to have funds to have a private psychiatrist or psychologist deal with our client and examine her, and also to have available, at the expense of the State, funds to hire a psychiatrist or psychologist to assist us in actually preparing the defense of Mrs. Buttrum. We bring these motions this late, at this point in time, due to disclosure provided by the District Attorney on August 13, 1981. That was provided to us at the end of the day set for -- or, end of the time set for the final motions in this case.

THE COURT: Well, I'm going to let you file your motions and I'm going to hear them.

MR. BROWN: Yes sir.

THE COURT: I mean, I'm not going to -- that's fine.

MR. BROWN: These motions are filed in response to that disclosure, in which, Dr. Henry Adams is disclosed as producing an opinion and a clinical impression of this Defendant. We feel that that is a significant turn of events, in that, the conclusions which he reaches are vastly different and in excess of the conclusions reached by the team at Milledgeville--the State psychologists and psychiatrists. We're very concerned about the potential impact of testimony of the nature which we would anticipate, in view of the written statement that he has provided. We feel like, if Mrs. Buttrum is to be afforded competent and effective counsel, we have got to have equal assistance in preparing to deal with this sort of testimony. We feel like this testimony

is so inflammatory and goes so far -- well, this potential testimony -- that we have to be in a position to counteract it. Now, we have no information as to whether the District Attorney has hired Dr. Adams, or if Dr. Adams is coming on a friendly basis, but Dr. Adams is an outside party. As far as we know, he is not a State employee; perhaps the University of Georgia, but he is not in the System as the psychiatrists and psychologists at Milledgeville are. We don't have access to a person like Dr. Adams, and we feel like in fundamental fairness, the dictates of the Fourteenth Amendment, Sixth Amendment, and Fourth Amendment of the State and Federal Constitutions demand that we be treated fairly and that we have an adequate opportunity to countermand this sort of very significant evidence. Our Motion for Continuance is filed for basically the same reasons, as an extension of this argument. We feel like, first of all, this disclosure

have to spend taxpayers' money just to be spending it, when that's already available.

MR. BROWN: Yes sir. Well, again, not to argue, but it's the -- when the District Attorney senses the need to go out and secure private psychiatric assistance in the prosecution, we sense that same need; and these motions are simply in response to that --

THE COURT: (Interposing) Well, I don't know what he did. I mean, you say that, but you haven't presented any evidence as to that fact. I'll deny your Motion for -- deny the Second Amendment to the Motion for Funds to Employ Field Investigator, Forensic Criminologist, Private Psychiatrist to Participate in the Defense Preparation for Trial of the Above Matter, and Amendment to a Motion for Private Psychiatric Examination and Testing. All right, that leaves us with a Motion for Continuance. Okay. Do you want

to present any evidence on this motion?

MR. BROWN: Okay, the motion -- no sir, that's in -- there are two facets to that. The first facet is: If our prior motion have been granted, we would have required time to follow through on the granting of that motion. The second basis is the fact that this testimony -- or proposed testimony -- is so different that we have our time planned very closely, we feel like it would necessitate at least a day or more to go to either Milledgeville or to sit down with Dr. Bullard to prepare to deal with this sort of adverse evidence; and we feel like we were pushing very closely with the time of trial and that this disclosure comes very late. That's the simple basis for that motion.

THE COURT: Well, you stated on your other motion -- I don't guess I got down to this fact -- that you haven't had time to prepare concerning this psychiatric testimony, and I

MR. BROWN: Yes sir.

THE COURT: Well, have you made -- let me ask: Have you made an effort to get in touch with the team at Milledgeville?

MR. BROWN: Yes, Your Honor.

THE COURT: In regards to this new revelation by the District Attorney last Thursday?

MR. BROWN: Yes sir; without going into the details of the Defense's preparation, we have made efforts which we feel are appropriate, and are trying to respond.

THE COURT: I just want to make sure you're making the effort. All right, I'll deny your Motion for Continuance. The trial is set for Monday morning, the 24th of August. Now, do you expect anything else to come up?

MR. BROWN: Assuming the District Attorney has no more disclosures today, Your Honor.

THE COURT: Well, I ask you: Do you have any more disclosures today?

MR. WILLIAMS: Not today.

THE COURT: Well, I asked last Thursday if you

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CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

SECTION 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Code of Georgia

TITLE 38. EVIDENCE

PART I. GENERAL PRINCIPLES AND RULES GOVERNING ADMISSION OF TESTIMONY

* * *

CHAPTER 38-3. HEARSAY

38-301 Definition; when and why admitted

(a) Hearsay evidence is that which does not derive its value solely from the credit of the witness but rests mainly on the veracity and competency of other persons.
(b) Hearsay evidence is admitted only in specified cases from necessity.

38-302 Original evidence, when

When, in a legal investigation, information, conversation, letters and replies, and similar evidence are facts to explain conduct and ascertain motives, they shall be admitted in evidence not as hearsay but as original evidence.

* * *

38-305 Res gestae

Declarations accompanying an act, or so nearly connected therewith in time as to be free from all suspicion of device or afterthought, shall be admissible in evidence as part of the res gastae.

38-306 Declarations by conspirators

After the fact of conspiracy is proved, the declarations by any one of the conspirators during the pendency of the criminal project shall be admissible against all.

* * *

38-310 (5769) Books of account

The books of account of any merchant, shopkeeper, physician, blacksmith, farmer, dairyman, planter or other person doing a regular business and keeping daily entries thereof may be admitted in evidence as proof of such accounts, upon the following conditions:

1. That he kept no clerk, or else the clerk is dead or otherwise inaccessible, or for any other reason the clerk is disqualified from testifying.

2. Upon proof (the party's oath being sufficient) that the book tendered is his book of original entries.
3. Upon proof (by his customers) that he usually kept correct books.
4. Upon inspection by the court, to see if the books are free from any suspicion of fraud.

* * *

38-409 (5782; 1029 P. C.) Effect of acquiescence or silence

Acquiescence or silence, when the circumstances require an answer or denial or other conduct, may amount to an admission.

* * *

38-411 (1032 P. C.) Confessions must be voluntary

To make a confession admissible, it must have been made voluntarily, without being induced by another, by the slightest hope of benefit or remotest fear of injury.

* * *

38-414 (1035 P. C.) Confession by joint offender or conspirator

The confession of one joint offender or conspirator, made after the enterprise is ended, shall be admissible only against himself.

* * *

38-418 (5785) Confidential communications, etc.

(a) There are certain admissions and communications excluded from consideration of public policy. Among these are:

1. Communications between husband and wife.
2. Between attorney and client.
3. Among grand jurors.
4. Secrets of state.
5. Psychiatrist and patient.

(b) No physician licensed under Code Chapter 84-9 shall be required to release any medical information concerning a patient, or in the case of a minor, by his or her parents or duly appointed guardian ad litem, except on written authorization or other waiver by the patient or on appropriate court order or subpoena: Provided, however, that any physician releasing information under written authorization or other waiver by the patient or under court order or subpoena shall not be liable to the patient or any other person: Provided, further, that the privilege shall be waived to the extent that the patient

places his care and treatment or the nature and extent of his injuries at issue in any civil or criminal proceeding: and Provided, further, that this subsection shall not apply to psychiatrists.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Appendix to the Petition for Writ of Certiorari was sent by ordinary mail to Mr. Michael J. Bowers, Attorney General, Judicial Building, Room 132, Atlanta, Georgia 30334, and Mr. Stephen A. Williams, District Attorney, Conasauga Judicial Circuit, Whitfield County Courthouse, Dalton, Georgia, 30720, Counsel for the Respondent, on this _____ day of October, 1982.

Margery Malkin Koosed

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